IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 16 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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INOX LEISURE LTD. - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2007

ORAL JUDGMENT

1. Present Company Petition has been filed by the petitioner – Inox Leisure Limited (Transferee Company) for sanctioning the scheme of Amalgamation

of one Calcutta Cine Private Limited (the Transferor Company) with the petitioner Company (Transferee Company) under Section 391 read with Section 394 of the Companies Act, 1956. It has been pointed out that the Transferor Company has its registered office in Kolkatta and hence all the necessary proceedings have been taken out in the High Court at Calcutta.

2. It is submitted in the petition that the petitioner Company is a listed public limited company and the Transferor Company is engaged in the business of setting up, managing and operating multiplexes in Eastern India. The Transferee Company is also engaged in the business of setting up, managing and operating a chain of multiplexes in India. It has multiplexes in number of cities including Mumbai, Pune, Nagpur, Kolkatta, Bangalore, Chennai, Jaipur, Goa, Indore, Vadodara etc. It is submitted that since both the Companies are engaged in the similar business, the amalgamation is proposed for the synergic advantage. It is also further submitted that the proposed amalgamation is in the interest of the shareholders and creditors. It is also submitted that by the proposed amalgamation, it would be possible to

achieve economy, better administration and efficiency in operation of the Undertaking which would ultimately benefit the shareholders of the petitioner. That the Board of Directors of the petitioner Company has passed the resolution approving the Scheme on 19th September, 2006.

3. It is submitted that vide order dated 1st December, 2006 passed in Company Application No. 625 of 2006 a meeting of the Equity Shareholders of the Transferee Company was directed to be convened and called for considering the proposed scheme of amalgamation and if thought fit, approving the same with or without modifications. It is submitted that accordingly meeting of the Equity Shareholders of the Transferee Company was convened on 04.01.2007 and the copy of the Chairman's Report along with requisite affidavit dated 09.01.2007 has been placed on record at Exhibit – H (Page 55) to the present petition. It is submitted that meeting of the Equity Shareholders of the Company was attended by 48 Shareholders (9 in person and 38 through proxies and 1 through the authorized representative) and the total value of their Shares is Rs. 40,52,75,170 being 4,05,27,517

shares of Rs.10 each. It is submitted that none of the Equity Shareholders who attended the meeting voted against the proposed scheme and the resolution approving the scheme was carried unanimously i.e. by 100% in number and in value.

4. The petition was admitted by this Court on 02.02.2007 and was fixed for final hearing on 12.03.2007 and the date of final hearing was directed to be advertised in two local newspaper viz. “Indian Express” (English Daily) and “Sandesh” (Gujarati Daily)- both Vadodara editions. Publication in the Government Gazette was dispensed with. This Court also directed to issue notice upon the Regional Director, Department of Company Affairs (now Corporate Affairs), Western Region, Mumbai.

5. In response thereto, Shri Harin P.Raval, learned Assistant Solicitor General of India appears on behalf of the Central Government. He has placed on record affidavit filed by one Shri P.L.Malik, Assistant Registrar of Companies, Gujarat along with the letter dated 12.04.2007 sent by the Regional Director, Mumbai. It is submitted in the said

affidavit that the Regional Director has decided not to oppose the Company Petition save and except that :

> “1. The Transferee Company may be directed to file affidavit to clarify as to whether any sale/ service is provided between the transferor Company and Transferee Company or vice-a-versa. If so, clarify whether sales tax / service tax / duty draw back is charged from the parties receiving sales / service and also to clarify as to how the petitioner will treat so collected tax / duty from appointed date till the effective date.
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> 2. Petitioner may be directed to submit valuation report in respect of share exchange ratio and also to submit latest financial position at the time of final hearing.
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> 3. The transferee Company may be restricted not to utilise the authorized capital of the transferor company and insisted for increase the authorized capital if necessary subject to compliance of Section 94/97 read with Schedule X of the Companies Act, 1956.”

6. An additional affidavit is filed on behalf of the petitioner Company affirmed by the Director of the petitioner Company dated 28.04.2007 clarifying

and/or dealing with the objections raised on behalf of the Central Government. It is submitted in the additional affidavit that there are no transactions of sale / service between the Transferor and the Transferee Company and no sales tax or service tax or duty drawback has been charged and as a result no provision is required for the treatment of the same. Dealing with Para 3 of the affidavit filed on behalf of the Central Government, a copy of the Valuation Report in respect of the Share Exchange Ratio prepared by Chartered Accountant dated 18th September, 2006 is produced. As per the same a fair ratio of exchange in the event of Amalgamation of Transferor Company into Transferee Company would be 33 (thirty three) equity shares of INOX of Rs.10 each fully paid for every 1(one) equity share of CCPL of Rs.1000/- each fully paid. A copy of the audited Balance Sheet of the Company as at 31.03.2006 is annexed with the petition and copy of unaudited and provisional Balance Sheet of the Petitioner Company as at 31.03.2007 is attached at Exhibit – 2 to the additional affidavit. Dealing with paragraph No.4 of the affidavit filed on behalf of the Central

Government, it is submitted in the additional affidavit that under the proposed scheme, the authorized Capital of the Transferor Company is not proposed to be utlised by the Transferee Company. It is also clarified that the Transferee Company shall comply with the provisions of Section 94 and 97 read with Schedule X of the Companies Act, 1956, whenever the same is applicable. Relying upon the additional affidavit, learned Advocate appearing on behalf of the petitioner has requested to sanction the proposed scheme of amalgamation.

7. I have heard Ms. Swati Soparkar, learned Advocate appearing on behalf of the petitioner Company and Shri Harin P. Raval, learned Assistant Solicitor General of India appearing on behalf of the Central Government. This Court has gone through the petition, proposed scheme of amalgamation, additional affidavit as well as affidavit filed on behalf of the Central Government and considering the same this Court is satisfied that all the issues raised by the Regional Director have been appropriately clarified and considering the same there is no impediment in sanctioning the proposed scheme of amalgamation. All

the Equity Shareholders of the petitioner Company present in the meeting have unanimously approved the proposed scheme of amalgamation. Apropos the advertisement published in the local newspaper, nobody has raised any objection. This Court is also satisfied that the proposed scheme of amalgamation would be in the interest of the Company and their members and creditors. There is no reason to stall the sanction of the scheme. It is also reported that so far as the Transferor Company is concerned, Calcutta High Court has sanctioned the proposed scheme of amalgamation in the proceedings initiated by the Transferor Company before the Calcutta High Court. Considering the same, the proposed scheme of amalgamation is hereby sanctioned. Prayer in terms of Paragraph No. 28(a) of the Company Petition No. 16 of 2007 is hereby granted.

8. The Company Petition is disposed of. So far as the cost to be paid is concerned, I quantify the same at Rs. 3500/- per petition. The same may be paid to Shri Harin P.Raval, learned Assistant Solicitor General of India by the petitioner – Company.

[M.R.Shah, J.]

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